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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

THE PEOPLE,

Plaintiff and Respondent,

v.

AGUSTIN DELGADO SANTANA,

Defendant and Appellant.

E065356

(Super.Ct.No. FWV1501283)

OPINION

APPEAL from the Superior Court of San Bernardino County. Michael R. Libutti,  
Judge. Affirmed.

Zulu Ali for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney  
General, Julie L. Garland, Assistant Attorney General, Barry Carlton, Deputy Attorney  
General, for Plaintiff and Respondent.

Defendant and appellant Agustin Delgado Santana appeals from an order denying his Penal Code<sup>1</sup> section 1016.5 motion to vacate his guilty plea. He argues that the trial court abused its discretion in denying his motion, since he was not adequately advised, in Spanish, of the special immigration consequences of his guilty plea. We affirm.

### PROCEDURAL BACKGROUND

Defendant was charged with the crime of driving with a blood-alcohol level of 0.08 percent or more, causing injury to another person, a felony. (Veh. Code, § 23153, subd. (b).) On September 29, 2015, he entered a plea agreement and pled guilty to the charge. He also admitted the allegation that he personally inflicted great bodily injury. (§ 12022.7, subd. (a).)

Approximately two months later, defendant filed a motion to withdraw his guilty plea on the grounds that he was not properly informed of the immigration consequences of his plea in his native language, Spanish. He claimed that he did not have a good command of the English language, and he was not provided a translator. The court held a hearing on the motion. Defendant testified in English. He said he had been in the United States since he was five years old, and he was currently 29 years old. He said he went to public school and dropped out of high school in the tenth grade. The attorney who represented him when he entered his plea also testified. The attorney testified that at a previous hearing on July 20, 2015, he informed the court that defendant did not require a

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<sup>1</sup> All further statutory references will be to the Penal Code, unless otherwise noted.

Spanish interpreter, he had been communicating with defendant in English, and defendant understood him. The attorney also testified that the court asked defendant if he was requesting to proceed in English, without a Spanish interpreter, and defendant responded, yes. The attorney further testified that he went over the plea agreement with defendant, specifically the immigration consequences of his plea, and that defendant acknowledged the consequences, in English. The court asked the attorney if he read the change of plea form to defendant, and he said yes. He also said that defendant never asked the meaning of any of the words or phrases. After hearing testimony and closing arguments, the court noted that he was the judge who conducted defendant's arraignment by video, using a Spanish interpreter, on July 13, 2015. Thus, defendant was clearly aware that Spanish language translation services were available to him. On July 20, 2015, defendant stated those services were not needed, and that hearing was conducted in English. Further proceedings were conducted without a request for an interpreter. The court also noted that paragraph 14 in the change of plea form properly advised defendant of the immigration consequences of his plea, and he initialed it after being read the form in English. The court concluded defendant failed to meet his burden of proof to withdraw his plea, since he was properly advised of the consequences of his plea and accepted them in entering the plea agreement. It then denied the motion.

## ANALYSIS

### The Court Properly Denied Defendant's Motion

Defendant argues that the trial court abused its discretion in denying his motion to withdraw his guilty plea. He claims he did not understand the immigration consequences of his plea because he was advised, orally and in written form, in English, and he was not given a Spanish language interpreter. He further contends that general advisements provided on the plea form did not adequately warn of the immigration consequences of his plea and did not meet the requirements under sections 1016.5 and 1018.<sup>2</sup> He adds that the record does not show whether he was provided an adequate opportunity to negotiate a nondeportable offense prior to entering his plea. Finally, he asserts the record does not show whether the immigration consequences were given orally; thus it is presumed they were not. We find no error.

Section 1016.5, subdivision (a), requires a trial court, prior to accepting a guilty or no contest plea, to administer the following advisement on the record: "If you are not a citizen, you are hereby advised that conviction of the offense for which you have been charged may have the consequences of deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States."

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<sup>2</sup> Section 1018 provides, in relevant part, that "[o]n application of the defendant at any time before judgment or within six months after an order granting probation is made if entry of judgment is suspended, the court may, and in case of a defendant who appeared without counsel at the time of the plea the court shall, for a good cause shown, permit the plea of guilty to be withdrawn and a plea of not guilty substituted."

Section 1016.5, subdivision (b), provides: “If . . . the court fails to advise the defendant as required by this section and the defendant shows that conviction of the offense to which defendant pleaded guilty or nolo contendere may have [adverse immigration] consequences . . . the court, on defendant’s motion, shall vacate the judgment and permit the defendant to withdraw the plea . . . and enter a plea of not guilty.” “Our Supreme Court has held, to obtain that relief, the following must be present: the defendant was not properly advised of the immigration consequences of the plea as required by section 1016.5, subdivision (a); there existed, at the time of the motion, more than a remote possibility that the conviction will have one or more of the specified adverse immigration consequences; and the defendant was prejudiced by the nonadvisement. . . . Our review is for an abuse of discretion.” (*People v. Arendtsz* (2016) 247 Cal.App.4th 613, 616-617 (*Arendtsz*).)

Defendant was properly and adequately advised of the immigration consequences of his guilty plea, as required by law. His complaints that the oral and written advisements were in English, and he was not given a Spanish language interpreter, are disingenuous. The record shows that at the outset of the July 20, 2015 hearing, defense counsel informed the court that defendant was arraigned with a Spanish interpreter. Defense counsel then stated: “[A]fter speaking with him, he speaks *perfect English*, and we would like to proceed *without* the Spanish interpreter.” (Italics added.) The court then asked defendant, in English, whether he wanted to proceed in English and without an interpreter, and defendant said yes. Furthermore, prior to entering his guilty plea,

defendant was advised of the immigration consequences as required by section 1016.5, subdivision (a). Defendant was advised in the written plea agreement, not only that his plea *may* have immigration consequences, but that it *would* result in deportation, exclusion from admission to the United States, and denial of naturalization if he was not a United States citizen. (See *Arendtsz*, *supra*, 247 Cal.App.4th at p. 617.) Defendant put his initials next to that provision on the plea form. He also initialed the provision which stated: “I have had sufficient time to consult with my attorney concerning my intent to plead guilty to the above charge(s) . . . . My lawyer has explained everything on this Declaration to me, and I have had sufficient time to consider the meaning of each statement. I have personally placed my initials in certain boxes on this Declaration to signify that I fully understand and adopt as my own each of the statements which correspond to those boxes.” He additionally initialed the statement which stated, “I can read and understand English.”

Before accepting the plea, the trial court advised defendant of the charges against him, and asked defendant if he read all three pages of his plea agreement, understood the rights he was giving up, and had sufficient time for his attorney to answer questions and explain everything to him. The court also asked if he initialed the boxes and signed the agreement. Defendant said, “yes,” and confirmed that he had done each of the above. His attorney agreed, and the court found that defendant read and understood the plea form, the charges against him, and the consequences of his plea. It further found he was knowingly, intelligently, and voluntarily waiving his constitutional rights. Thus, contrary

to defendant's claim, the record shows that he was properly and adequately advised of the immigration consequences of his guilty plea.

Moreover, defendant has not established prejudice. (*Arendtsz, supra*, 247 Cal.App.4th at p. 617.) His declaration accompanying his section 1016.5 motion states that if he had been provided a Spanish language interpreter, he would have been fully aware of the consequences of his plea and would not have entered a guilty plea. However, the record indicates that he requested to proceed in English, and he *was* fully aware of the consequences of his plea.

Defendant claims the trial court had a "more engaged role when advising a noncitizen" and should have advised him of the "special consequences" of a plea. Specifically, he contends that he should have been advised he may be ineligible to apply for certain types of immigration relief such as asylum or "cancellation of removal." Defendant relies on an unspecified "legislative intent" behind section 1016.5 and the United States Supreme Court's decision in *Padilla v. Kentucky* (2010) 559 U.S. 356, 372-374 (*Padilla*). This contention is without merit. "Nothing in section 1016.5 requires more than an advisement of the three major consequences of a plea that are specified in subdivision (a)." (*Arendtsz, supra*, 247 Cal.App.4th at pp. 618-619.) Furthermore, "*Padilla* did not address a trial court's duty to advise noncitizen defendants." (*Arendtsz, supra* at p. 619.) That case concerned ineffective assistance of counsel. (*Ibid.*) Moreover, "there is nothing in *Padilla* or under California law, including the Legislature's fairness

concerns, that compels a trial court to specifically advise on asylum or cancellation of removal.” (*Ibid.*)

Ultimately, defendant was properly and adequately advised of the three major consequences of a plea specified in section 1016.5—deportation, exclusion from admission to the United States, and denial of naturalization. (§ 1016.5, subd. (a).) The record clearly demonstrates that he understood the consequences and voluntarily entered his guilty plea. Therefore, the court did not abuse its discretion in denying his motion to withdraw his plea. (*Arendtsz, supra*, 247 Cal.App.4th at p. 617.)

#### DISPOSITION

The judgment is affirmed.

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HOLLENHORST  
Acting P. J.

We concur:

McKINSTER  
J.

SLOUGH  
J.